

1 JUDGE SIPPEL: Can we get the
2 exact dates of these discussions with Mr.
3 Bond?

4 MR. CARROLL: Yes. In fact, we
5 are going to do that right now.

6 JUDGE SIPPEL: Thank you, sir.

7 BY MR. CARROLL:

8 Q Could you open to paragraph 28 of
9 your direct statement?

10 MR. PHILLIPS: Your Honor, if I
11 may, I think Mr. Solomon would like more
12 water, if Mr. Carroll doesn't mind.

13 MR. CARROLL: Please, go right
14 ahead.

15 THE WITNESS: Thank you very much.

16 JUDGE SIPPEL: He doesn't mind for
17 water. Now --

18 MR. CARROLL: Thank you for that
19 clarification, Your Honor.

20 JUDGE SIPPEL: I always hear
21 outside of this room how much he appreciates
22 it when I clarify his questions.

1 THE WITNESS: Thank you very much.

2 And thank you, Mr. Carroll.

3 BY MR. CARROLL:

4 Q Mr. Solomon, you are very welcome.

5 Do you have paragraph 28 in front
6 of you?

7 A Is that on page 13?

8 Q It is indeed.

9 A I do.

10 MR. CARROLL: Your Honor, this is
11 from the witness' direct testimony.

12 JUDGE SIPPEL: Page 13?

13 MR. CARROLL: Page 13,
14 paragraph 28.

15 BY MR. CARROLL:

16 Q Now, let's back up because His
17 Honor asked about the dates. Let's go back to
18 the preceding page first, paragraph 27. The
19 May meeting we are referring to is referenced
20 there, May 12, 2009, is that right? Is that
21 correct, sir?

22 A Yes.

1 Q Okay. That's the first date when
2 you present to Mr. Bond the offers with the
3 two levels of carriage we discussed privately
4 that have the various costs associated with
5 them that we discussed privately, correct?

6 A I believe that's correct.

7 Q Okay. And then, you have your
8 followup conversation with Mr. Bond that you
9 reference in paragraph 28, is that right?
10 Which you date as being at June 9, 2009.

11 A Yes.

12 Q Correct? So there I think we have
13 the dates, Your Honor.

14 JUDGE SIPPEL: Just those two
15 dates.

16 BY MR. CARROLL:

17 Q They are the ones that you are
18 focused on. Is that right, sir?

19 JUDGE SIPPEL: Go ahead. I'm
20 sorry, Mr. Solomon.

21 THE WITNESS: Are they the ones
22 that you want me to focus on?

1 BY MR. CARROLL:

2 Q In your direct testimony, I
3 thought you were telling us that you made the
4 offer to Mr. Bond --

5 A Yes.

6 Q -- and his colleagues on May 12th,
7 and you got a phone call back from Mr. Bond
8 after a period of time and -- that date when
9 you got a call back, you placed it June 9th,
10 am I correct?

11 A Yes.

12 Q Okay.

13 JUDGE SIPPEL: But the -- I'm
14 sorry again. The meeting on May 12th was a
15 face to face.

16 THE WITNESS: Correct. In
17 Philadelphia.

18 JUDGE SIPPEL: In Philadelphia.
19 And where is your organization?

20 THE WITNESS: We're in Los
21 Angeles.

22 JUDGE SIPPEL: Okay. And June 9th

1 was over the phone.

2 THE WITNESS: I believe that's
3 correct.

4 JUDGE SIPPEL: Well --

5 THE WITNESS: Yes, that's correct.

6 JUDGE SIPPEL: Thank you.

7 BY MR. CARROLL:

8 Q Now, I thought you testified today
9 that Mr. Bond terminated the negotiations on
10 June 9th, that he's the one who called it to
11 an end. Is that your testimony?

12 A Yes.

13 Q Isn't it correct, sir, that you're
14 the one who ended it by saying you considered
15 further discussions a waste of time? Yes or
16 no.

17 A Yes.

18 Q And you ended it by saying it
19 would be a waste of time because you got
20 frustrated and you lost your cool, right?

21 A No.

22 Q Do you remember also telling Mr.

1 Bond that you weren't interested in any half
2 means anymore? Half measures -- do you
3 remember using the phrase -- telling Mr. Bond,
4 "I'm not interested in half measures. This is
5 a waste of time"?

6 A I recall the waste of time being
7 discussed in response to his suggestion that
8 we should go back to a market-by-market
9 scenario.

10 Q Well, it was discussed, you said
11 "This would be a waste of time." Right?

12 A I think I said "that would be a
13 waste of time."

14 Q And did you also say you weren't
15 interested in half measures? Yes or no.

16 A I don't recall specifically one
17 way or the other.

18 Q You don't recall one way or
19 another. So you're not denying it may have
20 been said; you don't have a recall well enough
21 to tell us whether you said it or not.

22 A And I'm not sure what the context

1 of that would have been.

2 Q Isn't it a fact that Mr. Bond did
3 make a counter-proposal to you?

4 A No.

5 Q Didn't he propose to you that he
6 would be willing to work and talk about
7 specific markets, region by region, and talk
8 about whether it made sense to give you
9 greater distribution in certain regions, where
10 maybe tennis was more popular in the U.S. than
11 in others?

12 In other words, he proposed a
13 region by region approach. Isn't that
14 correct?

15 A I think he did propose that.

16 Q Isn't it also the case -- and you
17 told him when he proposed that, "That's a
18 waste of time. I'm not interested." Correct?

19 A We told him that -- first of all,
20 that wasn't, in our minds, a counter to what
21 we had made, which was a national offer.

22 Q Ah. So you're saying because you

1 didn't consider it a counter-offer, that's why
2 you testified earlier today that no counter-
3 offer was made.

4 A That was an option that was
5 already on the table, and wasn't new -- what
6 he was introducing was not an offer, because
7 it was something that we were already able to
8 do.

9 Q You are not denying that he made
10 that offer, and you are not denying that you
11 were the one who cut it off by saying "That
12 would be a waste of time." Correct?

13 A I think he said that. Whether or
14 not it's an offer -- I guess you could tell me
15 what you think it is. I don't think that was
16 a counter-offer in any way to what we had been
17 talking about or, substantitively, what we had
18 been discussing.

19 Q And it is the case that tennis, by
20 the way, is more popular in some regions of
21 the country than others. In fact, you rank
22 the cities throughout the countries based upon

1 what your best tennis cities are, right?

2 A I think the USTA does that. There
3 are rankings that come out.

4 Q And you use them. Your people use
5 them to target areas and cities where you
6 think your programming might be more popular,
7 correct?

8 A In the past, that may have been
9 done. It's not something that we do currently
10 on an active basis.

11 Q Now, in addition -- I didn't hear
12 you mention this in your direct testimony, so
13 let me just clarify this. Do you not remember
14 that Mr. Bond also told you that your offer
15 wasn't agreeable to him because it would
16 dramatically increase Comcast's cost?

17 Do you deny that Mr. Bond told you
18 that?

19 A I don't deny that.

20 Q Okay. So to sum it, he told you
21 it would cost too much, offered to go by and
22 discuss region by region, you told him that

1 was a waste of time, and that's how everything
2 ended on this June date in 2009. Correct?

3 A It's --

4 Q Correct, sir?

5 A Okay, yes.

6 Q All right. Let's move off of
7 that. I want to go back in time to when you
8 first joined Tennis Channel. You first joined
9 in April of 2005, correct?

10 A Yes.

11 Q And did you have any experience
12 with a sports channel before you came to the
13 Tennis Channel?

14 A I'd had experience with sports on
15 television, but not with a single-sport
16 network.

17 Q Okay. The channel that you
18 handled right before you came to Tennis
19 Channel was Fine Living. That's not a sports
20 channel, is it?

21 A That's not. We had some sports on
22 there. We had golf-related product and some

1 other things, but we didn't have live
2 coverage.

3 Q And you came to Tennis Channel.
4 And right when you got there, you learned you
5 had some big problems to deal with, correct?

6 A I think there are always
7 challenges to every business.

8 Q There were some things you
9 discovered when you got there that made you
10 very unhappy, and were big problems. Do you
11 remember that?

12 A I'm not sure I can remember
13 specifically, because I'm not sure what you're
14 talking about. But I don't have any reason to
15 disagree.

16 Q Do you remember forming the view,
17 when you arrived -- shortly after you arrived
18 -- that the business plan Tennis Channel had
19 was, in your words, "a complete fiction"?

20 A I don't remember that
21 specifically.

22 Q Let me see if I can help you by

1 showing you a document, sir. This is Comcast
2 Exhibit 709. Your Honor, may I?

3 JUDGE SIPPEL: You may.

4 (Whereupon, the document referred
5 to was marked as Comcast Exhibit 709 for
6 identification.)

7 MR. CARROLL: Actually, Your
8 Honor, this one is not previously in evidence.
9 This is an exhibit we're going to offer on
10 cross-examination after I establish a
11 foundation for it.

12 JUDGE SIPPEL: Thank you.

13 MR. CARROLL: Do you recognize
14 this, sir, as an email, the top of the first
15 page -- let me do the Bates numbers first.
16 TTCCOM00086519 and 520, two pages of some
17 emails.

18 The top email on the first page,
19 that's an email from you, sir, to a Steve
20 Bellamy at the Tennis Channel dated June 29,
21 2005. Correct?

22 THE WITNESS: Yes.

1 BY MR. CARROLL:

2 Q Shortly after you arrived at
3 Tennis Channel, within a few months?

4 A Yes.

5 Q And you're responding to an email
6 Mr. Bellamy sent you, it looks like earlier on
7 the same day, June 29th. Do you see that?

8 A Yes.

9 Q Okay. And this is email
10 correspondence you and Mr. Bellamy had not
11 long after you arrived on the scene. And what
12 was Mr. Bellamy's job at the time?

13 A He was president of the channel.

14 Q Okay. So this is the CEO -- the
15 new CEO talking to his president. Mr.
16 Bellamy, a new president at this time, or had
17 he been there?

18 A He had been there.

19 Q All right. Now, the language that
20 I just asked you about. You see in the second
21 paragraph of your email, you say midway
22 through the second paragraph, first line --

1 this is on the first page of the exhibit, Your
2 Honor.

3 Top email, second paragraph,
4 starts "On the deal, we are still working on
5 roll-back model," et cetera. "Truth is," and
6 this is what I want to ask you about, sir.
7 "Truth is, our old plan was a complete
8 fiction, from what I can see. I'm quite
9 angry, actually. I don't know the ad sales
10 guy before Frank was, but he should be drawn
11 and quartered." Do you see that?

12 A I do.

13 Q All right. Does this jog your
14 memory?

15 A Not really. It appears to be
16 written at 11:20 p.m. at night, you know, a
17 couple of days -- a couple of weeks after I
18 got to the channel. So I don't recall it, and
19 it doesn't -- I certainly have no reason to
20 quibble that I wrote it. I don't remember
21 writing it.

22 Q Do you remember the complete

1 fiction was that your business model was based
2 on completely inflated advertising revenue
3 numbers and ratings?

4 A I remember that I thought that the
5 advertising projections at the time by the old
6 team were not in line with what I thought they
7 should be, or what I thought reflected an
8 accurate position at that time.

9 Q Do you remember they were off by
10 like 80 to 90 percent?

11 A I don't remember.

12 Q Do you remember a fellow by the
13 name of Frank Garland?

14 A I do.

15 Q Mr. Garland was right in the
16 middle of this process, correct?

17 A I'm not sure where he -- oh, yes.
18 He was involved in the process. Absolutely.

19 Q What was his position at the time?

20 A I think he was running the ad
21 sales department, if I remember correctly.

22 Q Okay. So he took a close look at

1 the ad sales numbers, do you remember? And he
2 communicates to you and Mr. Bellamy that we've
3 got a huge problem, we're using wildly
4 inflated numbers. Do you remember that?

5 A Are you saying that Frank Garland
6 said that? I haven't been able to read this
7 whole thing. I don't remember this period of
8 time at all. I mean, it's a long time ago.
9 Did he say that?

10 JUDGE SIPPEL: Take your time if
11 you want to read it.

12 THE WITNESS: Is it in here, what
13 you just said?

14 JUDGE SIPPEL: Mr. Carroll is just
15 asking the questions.

16 MR. CARROLL: I'm just asking do
17 you remember it.

18 THE WITNESS: I don't remember
19 that.

20 MR. CARROLL: All right. Let me
21 show you another exhibit and see if it helps.
22 May I, Your Honor?

1 JUDGE SIPPEL: Please.

2 MR. CARROLL: Thank you. This is
3 Comcast Exhibit 726.

4 (Whereupon, the document referred
5 to was marked for identification as Comcast
6 Exhibit 726.)

7 MR. CARROLL: Do you have Exhibit
8 726, sir?

9 THE WITNESS: I do.

10 BY MR. CARROLL:

11 Q Okay. Do you recognize this as an
12 email about seven days earlier than the one I
13 just showed you from Mr. Simon? He was your
14 CFO, is that right?

15 A Yes.

16 Q Okay, your chief financial officer
17 -- to Mr. Garland, Mr. Bellamy, and yourself.

18 A Yes.

19 Q And you see that he's put together
20 here -- first of all, for the record, Bates
21 numbers on this TT000037140 and 141, two page
22 exhibit.

1 And do you see that Mr. Simon is
2 putting together a summary of the ad sale
3 projections' best, most likely and worst case
4 scenarios, compared to the last presentation
5 to the December 2004 Board. Do you see that?

6 A Yes.

7 Q And he says, in a nutshell, the
8 best case scenario is 70 percent less than the
9 December plan, and the worst case scenario
10 approach is a 90 percent haircut. Do you see
11 that?

12 A I do. I'm sorry, the only
13 question I'm not sure of is to the Board.
14 Does it say that?

15 Q Well, do you remember, a plan had
16 been presented? This would have been before
17 you got there. And he's saying there was a
18 December 2004 plan presented to the Board.
19 I'm not asking you about that.

20 A Okay.

21 Q I'm asking you about what you
22 learned when you showed up.

1 A There it is, yes.

2 Q And you see he's saying that what
3 we presented to the Board in December 2004 was
4 wildly off. Do you see that?

5 A I do.

6 Q Okay. Do you remember this now?

7 A No.

8 Q And do you see the second page has
9 a chart of numbers quantifying the best case,
10 most likely case, and worst case? And what's
11 being quantified here are the advertising
12 sales, is that right? Total net ad sales.

13 A Yes.

14 Q And net ad sales is one of the
15 ways that you make money in your business, is
16 you sell advertising on your programming.
17 Correct?

18 A Yes.

19 Q And do you see that on the second
20 page there's a series of numbers run out all
21 the way to 2012 on what the revised numbers
22 would look for the net advertising sales? Do

1 you see that?

2 A I do.

3 Q Now, do you remember being worried
4 that you had a huge problem because people
5 were worried that you had misled your
6 investors and your own people, and were
7 misleading people about what your operations
8 were really worth?

9 A No.

10 Q You don't remember that at all?

11 A No. Not at this time, no. And it
12 doesn't -- I'm not sure who would have misled
13 who, or what you're talking about. This,
14 again, would have been shortly after I got
15 there.

16 Q In fairness, I'm not saying that
17 you were the person who was there and misled
18 people previously, but weren't you concerned
19 as the CEO who showed up that, oh my God,
20 we've been misleading people about what we're
21 worth?

22 A I think I would be concerned with

1 accuracy of projections.

2 Q Well, do you remember that in this
3 occasion?

4 A No.

5 Q All right. One more exhibit on
6 this, let me show you. This is Exhibit 104,
7 which I believe we have already marked and
8 this one is already in evidence.

9 JUDGE SIPPEL: Thank you.

10 MR. CARROLL: We put in front of
11 you what's been marked as Exhibit 104, sir.
12 Again, this is just to try and jog your
13 memory. It's a series of emails. You see the
14 second email down, this is April 26, 2005.
15 After you've arrived, correct?

16 THE WITNESS: Yes, I would have
17 seen it shortly after I arrived.

18 BY MR. CARROLL:

19 Q All right. And you'll see the top
20 email refers to a conference call with Randy,
21 Ken -- Ken's you, yes?

22 A Yes, I would assume so.

1 Q So they're getting ready for a
2 conference call with you. And do you see in
3 the second email there's a discussion where
4 Mr. Garland is reporting -- and he's your ad
5 guy -- he's reporting to your CFO on the ad
6 sale revenue projections.

7 He says "I've known this was far
8 off since I saw the original plan, which was
9 before I started. The longer we go, the more
10 I feel like we are misleading the investors
11 and the management team."

12 And then -- I won't use the
13 numbers, although these may be public. You
14 would know. He's referring to Fine Living
15 here.

16 He says "Keep in mind that at,"
17 and he uses some distribution numbers for Fine
18 Living, "had ad sales revenue around," and he
19 gives a price net per home that he then
20 compares to an estimate Tennis Channel's using
21 that is twice that amount.

22 I have done that, Your Honor, so

1 as not to use the precise numbers. Do you see
2 that, sir?

3 A I do.

4 Q Does this now jog your memory that
5 the problem was Mr. Garland realized you were
6 using -- not you, Tennis Channel was using
7 inflated advertising numbers per home, and was
8 nervous about misleading people if that
9 continued?

10 A That appears to be the substance
11 of his discussion, of his memo. I'm not sure
12 that either of his numbers are necessarily
13 accurate.

14 Q Did you -- at any rate, after you
15 learned about this, did you correct this? Did
16 you go to your Board or your investors and
17 tell them "We, Tennis Channel, made a mistake,
18 and we used inflated numbers, and the numbers
19 have to be changed"?

20 A I don't recall this whole specific
21 period. I do remember that the business model
22 was not -- didn't seem to be in line with,

1 necessarily, where the business was.

2 Inflated versus not hitting a
3 number is something you can debate over. They
4 may have mis-projected, they may have mis-
5 analyzed.

6 Q Do you remember why they mis-
7 analyzed? Do you remember talking to Mr.
8 Garland and learning why it was, what the
9 problem was?

10 A Again, I don't remember this
11 particular period with any specificity. It
12 was a long time ago.

13 Q Do you remember learning that the
14 problem is very close to the issue, one of the
15 issues you spoke about on direct? The problem
16 was, they were assuming rating numbers that
17 were above channels like ESPN, and very
18 unrealistic for the size of the viewing
19 audience that Tennis Channel could command.

20 Do you remember that?

21 A I don't remember that.

22 Q No memory at all?

1 A No.

2 MR. CARROLL: One more exhibit, if
3 I could, Your Honor.

4 JUDGE SIPPEL: Please.

5 MR. CARROLL: Thank you. This is
6 Exhibit 572, sir.

7 JUDGE SIPPEL: Thank you.

8 MR. CARROLL: This is already in
9 evidence, Your Honor.

10 JUDGE SIPPEL: Okay.

11 MR. CARROLL: Now this, sir, in
12 fairness to you, is dated December 2004,
13 before you got there. But it's Mr. Garland,
14 the same Mr. Garland that you spoke to in
15 April, and he's reviewing in great detail --
16 and Your Honor, this relates to some language
17 I put in the book in my opening and had
18 quoted, it comes from this document that we're
19 looking at here. And I'm going to focus on it
20 in a second.

21 Do you remember, from looking at
22 this, and Mr. Garland spoke to you after you

1 got there about the fact that the size of your
2 enthusiast group was smaller than golfers,
3 hunters, fishermen, and other groups, and that
4 the rating numbers that were being used for
5 the viewership for Tennis Channel were
6 inflated by comparison to what other channels
7 were getting, such as CNN, ESPN, MSNBC?

8 Does this jog your memory at all,
9 sir?

10 A It doesn't. And just to be clear,
11 you said "you had spoken to Mr. Garland," and
12 I'm not sure what you were referring to.

13 Q Wasn't Mr. Garland in the chain of
14 communication on the emails we looked at
15 earlier, sir? Look back at Exhibit 726.

16 A Yes. This was a note from Bill
17 Simon saying that he had a call, presumably in
18 April, coming up on April 26th with Randy and
19 Ken. So I'm not sure if Mr. Garland was
20 involved with that or not, or if I ended up
21 being on that call.

22 Q Well, no, sir. Go to 726, if you